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Transformation of labour and future of labour law in Europe

Some remarks on the Supiot report

- **Introduction:**

Supiot was the chairman of a group of experts who were invited by the European Commission to give an analysis of current trends on the European labour market. In 1998 the Group provided the results of its research work on several topics and formulated guidelines. The following outline gives an overview about the most important aspects of this report and stretches out some developments on the European Union level after the report was published.

- 1. **General framework:**

The report compares the so called classic labour law model with current trends on the labour market.

Structur of the classic labour law model:

- employee-employer relationship (subordinate work) focusing on lifetime employment, full-time jobs, male gaze on employment conditions;
- unions centred around business sectors, not around trades (except UK);
- State aim: guarantee of individual security for workers, uniform working hours, independant collective bargaining, special status für civil servants.

Current Trends:

- Lifetime perspective of one job has been abandoned; stable employment conditions are an exemption;
- Increase of female work force;
- More casual working arrangements;
- Economic crisis challenge for the unions; new issues (additional to salaries and working conditions): employment policy, company survival, gender equity;
- State: efforts to maintain competitive conditions for the economy and trends to question existing standards and level of social security;
- EU: Consent of the member states to enlarge its social authority (Amsterdam, employment chapter).

- 2. **Work and private power**

Traditional structure:

- Private power of employer, subordination of employee;
- Bond: labour contract (not limited, full time, in the business place of the employer);
- Organisation of work (Fordist model in the production area) : hierarchy, standardized working conditions.

Current trends:

- Change of business organisation; technical equipment substitutes simple human work; greater complexity of working conditions; demand for training;
- Casualisation of labour (more fixed-term contracts; hiring of dependant self employed people; out sourcing of work);
- More complex relations between employers and workers through third parties: subcontractors and temporary employment agencies.

Guidelines :

- Extension of the scope of labour law to cover all kinds of contracts involving the performance of work for others.
- Adoption of a Community Definition of the notion of employee (to accomodate new forms of dependant work, e.g. dependant self-employed persons):
 - application of certain aspects of labour law to workers who are neither employees nor employers (Italy: parasubordinazione; Germany arbeitnehmerähnliche Person).
- Consolidation of a specific status for temporary-help-workers (social dialogue discussion of a directive-proposal came to a stand still in 2001):
 - Enlargement of the principle of equal treatment for atypical work in recent years (part time, fixed-term contracts);
 - Concept: equal remuneration for temporary help workers as the comparable worker in the user enterprise;
 - European-scaled intervention modelled on the directive 96/71 requiring companies engaging in work on one and the same construction site to coordinate all worker health and safety matters.

3. Work and employment status

Classic model:

- lifetime employment, continuity of a condition;
- male oriented employment structure;
- full employment.

Current trends:

- internal flexibilisation (different job, same employer);
- external flexibilisation (casualisation of contracts);
- High unemployment rates;
- Increase of female workforce.

Guidelines:

- Guarantee of the continuity of a career rather than the stability of specific conditions;
- Protection of workers during the transition between jobs
 - Example: Transfer of Undertakings Directive 77/187, reshaped through directive 98/50: protection of working conditions in the case of the transfer of an undertaking;
 - Development of directives for other economic scenarios with an effect on the transition of jobs to protect working conditions.
- Stronger links between school and working life, employment and training;
- Improvement of access to a first job and avoidance of long-term employment;
- Demand for active security in uncertain circumstances ("flexicurity").

4. Work and time

Trends:

- Appearance of new production systems but also the need for flexibility in the service industry may keep workers more at the employers disposal;
- On call work casts its shadow over free time.

Guidelines:

- Collective bargaining is the most appropriate platform for rules governing time;
- Full use of Working Time Directive 93/104 - Decision of the ECJ 3.10.200 SIMAP:
 - Directive 93/104 was formulated in order to encourage and establish a universal working time model across Europe (rules for the protection of safety and health of workers);
 - Definition of working time as any period during which the worker is working, at the employer's disposal and carrying out his activities or duties, in accordance with national laws and/or practice;
 - Rest period is defined as any period which is not working time;
 - A minimum period of rest consists of 11 hours (hospitals 10)/day , whereas maximum working time should not exceed 48 hours/ week;
 - No definition of the time of stand-by-workers;
 - Practice (Spain, Germany): Stand-By-work not fully counted as working time even though the physical presence of the worker at his place of work is obligatory;
 - ECJ: Time spent at work by a worker will be regarded as working time in its entirety, when the obligation exists that the worker has to be present and available at his place of work. The splitting of a continuous time period into periods of rest and working time is not permitted;
 - For workers on duty who must be contactable ("on call") only the actual hours spent in carrying out the activity will be taken into account with determining working time.

5. Work and collective organisation

Trends:

- More issues are being addressed under collective bargaining (company managements issues like time and work flexibility, social plans);
- In Art. 137 ECT the social dialogue between unions and employers association is established; Collective agreements between the social partners are vested with the enforcement of legal provision through the Council.
Successfull examples:
 - Family leave
 - Part time
 - Fixed-term Contracts
- Non successfull examples:
 - European works council
 - Temporary help service
- Organisation of collective bargaining: individual companies tend to acquire ever-greater relevance to the detriment of the central role traditionally played by the whole industry (opening clauses in industry-wide collective agreements);
- Union members.ip is declining; raises question of representation

Guidelines:

- Active support from public (in particularly Community) authorities for recasting collective bargaining (eg. mandatory bargaining and procedural rules on representation);
- The dual system of representation on a company level (works council/ union delegation) is more complementary than adversarial (reciprocal support);
- But also: acceptance of alternative forms of profiling collective interests by subject areas / against the principle of simple trade union monopoly (like in France);
- Proliferation of bargaining areas eg. in networked companies (otherwise white spots).

6. Work and State

Trends:

- State faces increasing individualisation of lifestyle and change of society (femalisation of work);
- General trend in public services is to move from the State as manager, delivering services directly, to the state as guarantor, setting rules for the provision of services through private bodies;
- In certain areas sovereignty has been transferred to the EU.

Guidelines:

- State should guarantee individual and collective security in the face of risks
- Procedural guarantees through recognised representative bodies and a limited number of consultation entities in the area of objectives laid down by law;
- Extended attempts to achieve formal equity for men and women in all areas; EU: full use of article 141 (4) ECT (positive action);
- Principle of equal treatment is becoming universal for working conditions in the common market; obligation of the member states:
 - implementation of the equal treatment directives 2000/43 for persons irrespective of racial or ethnic origin;

- and directive 2000/78 for persons irrespective of their religion or belief, disability, age or sexual orientation;
- EU must guarantee fundamental social rights on a constitutional level.